IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 606 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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LAXMIKANT NARHARILAL BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 606 of 1991

MR NILESH A PANDYA for Petitioner No. 1

MR GORI, ASSTT.GOVERNMENT PLEADER for Respondent No. 1,2

MR KG VAKHARIA for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 31/07/2002

ORAL JUDGEMENT

The petitioner was appointed as Additional Assistant Engineer on March 22, 1982 on ad-hoc basis with

respondent No.2. He has come out with a case that he has been removed from service by order Annexure "C" and has prayed to direct the respondent authorities to treat Annexure "C" as illegal, unconstitutional and without jurisdiction, null, void and without effect. He has also prayed for a direction on respondents to continue the petitioner on his post with all other benefits of service including the benefit of promotion etc. He has also prayed for quashment of charge-sheet Annexures "D" & "F".

2. Respondent authorities have come out with a case that the petitioner has not been removed from service. According to the respondents, the petitioner's conduct was not good and therefore, Departmental proceedings were initiated which were found to be with some technical defect and therefore, those proceedings were dropped and fresh proceedings were initiated. Those proceedings are pending and yet not concluded. It is also the case of the respondents that the petitioner resumed his duty even after filing of the petition, then remained absent, then again resumed duty, then again has absented from duty.

3. From the rival side contentions what emerges clearly is that the petitioner has not been removed from service and therefore, prayer in paragraph 23(a) cannot be considered for being granted. Likewise, direction to treat the petitioner on duty also does not survive as he has not been removed from service. So far as quashing of charge-sheet at Annexures "D" and "F" are concerned, Mr. Rajesh Desai, learned Advocates states that Annexure "D" has been cancelled and Annexure "F" is subsisting. Therefore, so far as quashment of Annexure "D" is concerned, question does not survive. So far as Annexure "F" is concerned, the proceedings are going on and at this stage this Court is not inclined to quash the same as no material is indicated for the purpose and the Departmental proceedings are yet to be completed.

4. For the foregoing reasons there is no substance in the petition and the petition must fail. However, it is shocking to note that Departmental proceedings initiated in the year 1990 are yet not concluded by the respondent authorities despite an observation of this Court in order dated 5.4.1991 that it shall be open to the second respondent to proceed with the pending enquiry and therefore, some directions in this regard are required to be given.

5. Respondent authority is directed to proceed with the enquiries and conclude the same as early as possible, but in any case not later than 31st October, 2002. The

petitioner shall co-operate in proceeding with the enquiry. This direction is required to be given for the reason that as stated by the respondent, the petitioner is not responding to any of its communication.

6. Petition stands dismissed with the above directions. Rule is discharged with no order as to costs.

(A.L.Dave, J.)

*/Mohandas